

REMARKS**Status of Claims**

Claims 1-9, 11-12, and 14-21 are pending, with claims 1 and 20 being independent. Applicants note with appreciation the indication of allowance of claim 20 and allowable subject matter of claims 15-18 if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Rejection - 35 U.S.C. §103

Claims 1-9, 11-12, 14, 19 and 21 were rejected under 35 U.S.C. §103(a) as being unpatentable over Hasegawa et al. (U.S. Publication No. 2005/0269584) further in view of Tsujimura et al. (U.S. Publication No. 2003/0168653) and Sato et al. (U.S. Publication No. 2006/0219998).

Applicants respectfully submit that it appears that the Examiner incorrectly cites the Hasegawa reference. As discussed in the previous response filed on October 14, 2008, U.S. Publication No. 2005/0269584 is not a valid reference in light of the priority date of the present application. Thus, Applicants assume that the Examiner intended to cite U.S. Publication No. 2004/0147134 as discussed in the previous Office Action and the response thereto filed on May 4, 2009.

Applicants further submit that Sato is not a valid prior art references under 35 U.S.C. §103(a). The earliest effective filing date of Sato would be April 12, 2005 as the filing date of the Provisional Application No. 60/670,236 to which a priority is claimed, while the present application claims foreign priority to Japanese Patent Application No. 2004-079873 filed on **March 19, 2004**. The certified English translation of Japanese Patent Application No. 2004-

079873 has been filed together with the October 14, 2008 response. In view of that priority date, Sato is not a valid prior reference under 35 U.S.C. § 103(a) relative to the above identified application.

Applicants further submit that neither Hasegawa '134 nor Tsujimura discloses the first n-type semiconductor layer containing indium and formed over a main surface of the substrate, as recited by claim 1, and it would not have been obvious to add this feature to the combination of Hasegawa '134 and Tsujimura.

Thus, Applicants respectfully request that the Examiner withdraw the rejection of claims 1-9, 11, 12, 14, 19 and 21 under 35 U.S.C. §103(a).

Conclusion

Having fully responded to all matters raised in the Office Action, Applicants submit that all claims are in condition for allowance, an indication for which is respectfully solicited. If there are any outstanding issues that might be resolved by an interview or an Examiner's amendment, the Examiner is requested to call Applicants' attorney at the telephone number shown below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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